

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ARTHUR DECARLO, JR, Personal
Representative on behalf of the Estate of his father,
ARTHUR DECARLO, SR. in his individual
capacity, and on behalf of his father's heirs and
next of kin,

Plaintiff,

-against-

NATIONAL FOOTBALL LEAGUE,

Defendants.

Date Filed:

INDEX No.

SUMMONS

Plaintiffs designate – New York County as the place of trial

The basis of the venue - Location of the defendant's headquarters and location of some of the tortious conduct

Defendant resides at – 345 Park Ave., New York, NY 10022

To the Above Named Defendant:

You are hereby summoned to answer the Civil Action Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on Plaintiffs' Attorneys within (20) days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

AFFIRMATION OF WENDY R. FLEISHMAN
TO VERIFY THE COMPLAINT

The undersigned, an attorney admitted to practice in the Courts of the State of New York, hereby affirms as true under all the penalties of perjury that Affirmant is the attorney of record for Plaintiffs in the within action; that Affirmant has read the foregoing Complaint and knows the contents thereof; Affirmant further states that the reason this affirmation is made by Affirmant and not by Plaintiffs is that Plaintiffs are not located in the County of New York where Affirmant has her offices.

The grounds of Affirmant's belief as to all matters not stated upon Affirmant's knowledge is the investigation undertaken by Affirmant on behalf of Plaintiffs.

New York, New York



WENDY R. FLEISHMAN

Dated: November 11, 2015

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ARTHUR DECARLO, JR, Personal Representative on
behalf of the Estate of his father, ARTHUR DECARLO,
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INDEX NO.

CIVIL ACTION
COMPLAINT

JURY TRIAL DEMANDED

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

COMPLAINT

COMES NOW, Plaintiff Arthur DeCarlo, Jr., individually and as Personal Representative of the Estate of Arthur "Art" DeCarlo, Sr. ("DeCarlo" or "Decedent"), by and through undersigned counsel, and brings this action against Defendant the National Football League (the "NFL," "the league," or "Defendant"), and alleges as follows:

NATURE OF THE ACTION

1. This wrongful death/survival action arises from the death of Art DeCarlo on December 21, 2013. His death was caused by Chronic Traumatic Encephalopathy ("CTE") resulting from concussions due to repetitive head-trauma suffered during his career as a professional football player for the NFL from 1953 to 1961.

2. Beginning in the 1920s, evidence linked repetitive head-trauma to the unrecognized symptoms experienced by DeCarlo and to CTE, the neurological illness that claimed his life. The NFL had constructive and actual knowledge that professional football

exposed DeCarlo and other professional football players to repetitive head trauma, and that such trauma was linked directly to progressive emotional and cognitive deficits and ultimately to CTE.

3. Since its inception, the NFL has controlled and regulated, *inter alia*, the game of professional football. Most importantly, the NFL set the rules of the game, by and through the Constitution and Bylaws in effect during Art DeCarlo's career and also through its voluntary undertakings as alleged herein. The NFL has used its authority to create its Constitution and Bylaws pre-dating any collective bargaining process, and to compel all NFL players and employees of the member clubs to follow the policies, rules, and regulations the NFL has enacted and imposed. The NFL represented to the players, the community and the public that it acted as the guardian and authority on the issue of player safety.

4. Despite the NFL's assumption of this responsibility, the NFL was negligent and failed to carry out this duty in that it failed to inform NFL players, including Art DeCarlo, of the risks and dangers associated with repetitive head-trauma.

5. The NFL ignored and then actively concealed the information that progressive long-term neurological injuries could result from repetitive head-trauma suffered while playing football from players, their families, and the public. As a direct and/or proximate result of this failure to warn, and also as a direct and/or proximate result of the later subsequent failure to alert Art DeCarlo to the risks and warning-signs of devastating latent injuries from repetitive head-trauma, DeCarlo and his family were unaware of the cause, extent, and true nature of his devastating injuries and lacked the ability to mitigate his pain and suffering prior to death. And as a direct/proximate result of this failure to warn, Art DeCarlo ultimately suffered death.

JURISDICTION AND VENUE

6. Pursuant to CPLR §§ 301 and 302, this Court has personal jurisdiction over the Defendant NFL, because it is a citizen of New York County, it conducts substantial and continuous business in the State of New York and, specifically in New York County.

7. Subject matter jurisdiction is proper where all causes of action sound in state-law tort claims arising from statutory law, specifically pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. § 8302 and the Pennsylvania Wrongful Death Act, and the applicable Pennsylvania common law tort claims the Wrongful Death Act, 42 Pa. C.S.A. § 8301, individually on behalf of Arthur DeCarlo Jr., in Mr. DeCarlo Jr.'s capacity as Personal Representative to the Estate of Arthur DeCarlo, and on behalf of the decedent Arthur DeCarlo's survivors entitled to recover damages in this action:

- Arthur DeCarlo Jr.;
- Thomas Edward DeCarlo;
- Linda DeCarlo Bauk;
- James Edwin DeCarlo;
- Donna DeCarlo Schaaf; and
- Mary Kerr DeCarlo.

8. The National Football League Players' Association (the "NFLPA") did not negotiate a collective bargaining agreement ("CBA") with the NFL ownership until 1968. DeCarlo retired from professional football in 1961 at the end of the 1960-1961 league year.

9. DeCarlo was never party to a CBA with the NFL; nor did the Players' Association—to the extent it existed in any form, during any portion of DeCarlo's football

career—receive recognition from a professional football entity, nor did DeCarlo engage in direct or indirect collective bargaining with a professional football entity as an active or retired player.

10. The NFL's injurious conduct as alleged herein (with respect to rule-making and player-safety) occurred either a) pursuant to duties in the NFL Constitution & Bylaws—which was not a collectively bargained-for document during the time-period of DeCarlo's career—or through its performance of voluntary undertakings.

11. Venue is proper in this County pursuant to CPLR §503 (b) and (d) because—throughout the period of the concealment-fraud alleged herein, the NFL's headquarters have been based in New York, NY, and therefore, a substantial part of the events and/or omissions giving rise to the claims emanated from activities within this jurisdiction, and because the NFL continues to conduct a substantial part of its business within New York County.

PARTIES

12. Plaintiff Arthur DeCarlo, Jr. is a citizen of Alabama, and also brings claims as Personal Representative for the Estate of Arthur DeCarlo Sr. where the estate is domiciled in Alabama.

13. Decedent Arthur DeCarlo, Sr., was a former professional NFL football player.

14. Decedent DeCarlo played professional football in the NFL between 1953 and 1961.

15. Decedent DeCarlo was exposed to numerous concussive and sub-concussive blows throughout his NFL career. These exposures included but were not limited to documented loss-of-consciousness concussions where DeCarlo was subsequently returned to game play within the same game, within several plays of having been rendered unconscious.

16. Defendant National Football League (“NFL”) is an unincorporated trade association, located at 345 Park Avenue, New York, New York.

17. Throughout decedent DeCarlo’s career, the NFL maintained its headquarters and offices in Pennsylvania at 1 Bala Avenue, Bala Cynwyd, Pennsylvania, the center of gravity for rule-making, player-safety failures and the alleged acts of negligence leading to the decedent’s on-field injuries.

18. The NFL has long declared that its purpose is “to promote and foster the primary business of League members, each member being an owner of a professional football club in the United States [and to] do and perform such other functions as may be necessary to carry out the purpose and objects of the league.” *See* NFL Const. Art. II. This article of the NFL’s constitution was drafted prior to any CBA with the NFLPA.

19. The NFL has never been Mr. DeCarlo’s employer. During his playing career, Mr. DeCarlo was employed by three NFL member-clubs (teams): the Washington Redskins, the Pittsburgh Steelers, and the Baltimore Colts. Each of these clubs functions as a separate business, but each member-club shares revenue from broadcasting, merchandising, and licensing. Each of the clubs currently holds partnership interests in wholly-owned subsidiary corporations such as NFL Ventures and NFL Properties.

SINCE THE 1920’s, MEDICAL SCIENCE HAS RECOGNIZED THAT REPETITIVE HEAD-TRAUMA CAUSES LONG TERM NEUROLOGICAL INJURIES, INCLUDING CHRONIC TRAUMATIC ENCEPHALOPATHY AND DEATH

20. Before and during Mr. DeCarlo’s playing career, medical scholarship linked exposure to repeat head-trauma with long-term neurological injury, specifically what was then called dementia puglistica but what is now known as CTE.

21. In 1928, neurologist Harrison Martland studied boxers and linked repetitive head-traumas to dementia pugilistica. Dr. Martland published his findings in the *Journal of the American Medical Association*.

22. In 1933, the National Collegiate Athletic Association (“NCAA”) acknowledged the dangers of concussions in its Medical Handbook for Schools and Colleges (“Handbook”). The Handbook notes that “[t]he seriousness of these injuries is often overlooked.”

23. As for treatment, the Handbook recommended rest and constant supervision for as long as a headache persisted, and hospitalization for headaches persisting longer than two hours. If a player’s symptoms persisted for more than 48 hours, the Handbook warned that the player “should not be permitted to compete for 21 days or longer, if at all.” The Handbook also explicitly connected the condition known as “punch drunk” to repeated concussions in football, and recommended that “[a]ny individual who is knocked unconscious repeatedly on slight provocation should be forbidden to play body-contact sport.”

24. In 1937, the American Football Coaches Association published a report warning that players who suffer a concussion should be removed from sports demanding personal contact. The report stated that allowing players to continue playing after a concussion was too prevalent a practice.

25. In 1948, the Medical Advisory Board of the New York Athletic Commission recommended that a boxer who was knocked out undertake no activity for 30 days, and seek medical follow-up. This recommendation, designed for the boxer to avoid “punch drunk syndrome,” now known as CTE, was codified as a rule of the New York State Athletic Commission.

26. In 1952, the *Journal of the American Medical Association* published a study by Ewald W. Busse and Albert J. Silverman entitled “Electroencephalographic Changes in Professional Boxers.” The study recognized the “psychic changes observed in a high percentage of boxers. . . due to brain damage, which is also responsible for the less frequently seen, so-called ‘punch-drunk’ person, who is in fact in a state of traumatic dementia and reveals severe psychic and neurological abnormalities.” The study went on to surmise that the damage “is probably due to multiple concussion[s],” and concluded that “[i]f the trauma is severe or is mild but repeated at intervals that do not permit the brain to return to normal functioning, permanent damage may result.” Busse, Ewald W. and Silverman, Albert J. (1952, August 23) Electroencephalographic changes in professional boxers, *Journal of the American Medical Association* 149:17, pp. 1522-1525.

27. That same year, the *New England Journal of Medicine* published a study on recurring sports injuries, including injuries experienced playing football, and found that “patients with cerebral concussion that has recurred more than three times or with more than momentary loss of consciousness at any one time should not be exposed to further body-contact trauma.” Thorndike A. Serious recurrent injuries of athletes—contraindications to further competitive participation. *New Eng J Med.* 1952;247(15):554-556.

28. Over the decades that followed Mr. DeCarlo’s professional football career, the knowledge of the connection between the of concussive and sub-concussive blows he suffered and the long-term neurocognitive impairments that would eventually manifest in him continued to grow, leading to advancements, rule changes, and further study in other professional sports leagues and also in amateur sports leagues. But, no changes were made by the NFL.

THE NFL MAINTAINED AUTHORITY AND CONTROL OVER PLAYER SAFETY.

29. During DeCarlo's NFL career, the NFL made specific rules of play pursuant to its powers under the league Constitution and Bylaws.

30. The NFL's rules of play did not sufficiently protect decedent DeCarlo from sub-concussive and concussive exposure during his playing career, despite these rules following the NCAA's recognition of the severity of the head-injury-exposure problem by nearly two decades, and their following the Martland study by a quarter-century.

31. The NFL's interventions and/or failures to enact proper rules to intervene during DeCarlo's playing career represented unreasonable failures to protect him from the sub-concussive and concussive exposures he endured, given the available science on this topic and its view within other areas of the football community.

32. Beginning in the 1930s, and throughout Mr. DeCarlo's playing career, the NFL controlled and regulated professional football, particularly with respect to player-safety and health.

33. The NFL acted as the regulatory / supervisory body for issues arising between club and player.

34. The NFL used its authority to compel NFL players and member-clubs to follow policies, rules, and regulations that the NFL enacted and imposed.

35. For example, during DeCarlo's career, the NFL identified tackling techniques that exposed players like DeCarlo to risk of orthopedic injury, including head, neck, and leg injuries, and issued regulations to warn players of the hazardous nature of continuing to apply hazardous tackling techniques.

36. As a result, the NFL unilaterally assumed a duty to act in the best interests of the health and safety of NFL players, to provide truthful information to NFL players regarding risks to their health, and to take all reasonable steps necessary to ensure the safety of players.

37. Yet, the NFL failed to promulgate and enforce rules and safety measures to protect DeCarlo and other players from repetitive head-trauma. For example, despite knowledge of the 1952 study in the *New England Journal of Medicine*, the NFL did not institute return-to-play protocols that would have reduced the neurological injuries that DeCarlo incurred.

38. Since the NFL has voluntarily assumed its role as the unilateral guardian of player safety, the NFL players and their families, including DeCarlo, have looked to the NFL for guidance and relied on the NFL on all player safety issues.

39. The NFL has exacerbated the health risks to players by promoting the game's violence and lauding players for returning to play despite being rendered unconscious and/or disoriented due to their exposure to concussive and sub-concussive forces.

40. Although the NFL assumed a responsibility to oversee the game in a reasonable manner, the NFL failed to carry out its duty in that it failed to inform and protect DeCarlo from repetitive head-trauma, and failed to mitigate his pain and suffering after it knew he had been subject to thousands of exposures over his 10-year career.

**THE NFL WAS IN A SUPERIOR POSITION OF KNOWLEDGE AND AUTHORITY
AND OWED A DUTY TO PLAYERS**

41. At all times material, the NFL's unique position at the apex of football, paired with its unmatched resources as the most well-funded organization devoted to the business of the game, has afforded it unparalleled access to data relating the effect of head impacts on football players and made it an institutional repository of accumulated knowledge about head injuries to players.

42. The NFL's accumulated knowledge about head injuries to players, and the associated health risks, was at all times vastly superior to that available to players like DeCarlo.

43. On information and belief, since its inception, the NFL received and paid for advice from medical consultants regarding health risks associated with playing football, including the health risks associated with concussive and sub-concussive injuries. Such ongoing medical advice and knowledge placed the NFL in a position of ongoing superior knowledge to the players. Combined with the NFL's unilateral and monopolistic power to set rules and determine policies applicable to its game, the NFL at all relevant times was in a position to influence and dictate how the game would be played and to define the risks to which players would be exposed.

44. Given its critical knowledge and stated supervisory role, the NFL had a duty to warn players of the risks of long-term brain damage they faced, and to set forth guidelines or rules concerning return-to-play criteria in order to combat the devastating effects of concussive and sub-concussive impacts.

45. The NFL's failure and breach of duty increased the risk of long-term injury and illness to its players and decreased the likelihood that former players, including DeCarlo would seek medical attention and/or treatment when symptoms first manifested.

THE NFL TURNED A BLIND EYE TOWARDS AND ACTIVELY CONCEALED THE RISKS TO PLAYERS OF REPETITIVE HEAD-TRAUMA.

46. Because of the scientific evidence and awareness elsewhere in the sports world, the NFL knew or should have known of the health risks associated with concussive and sub-concussive blows. As a result, it knew or should have known that NFL players, including DeCarlo, were at significant risk of developing long-term brain damage and cognitive decline as a result of multiple blows to the head.

47. The NFL instead ignored, minimized, disputed, and suppressed this emerging consensus, keeping players and former players like DeCarlo in an inferior position of knowledge. For over 40 years, the NFL and its co-conspirators denied constructive and/or actual knowledge of this consensus, and argued that no link exists between CTE and the game of football, or that no conclusion is possible without further study.

48. During the 1970s and 1980s, the NFL was aware of publications in the medical science community that established that concussive and sub-concussive injuries were a significant risk factor for short-term and long-term neurocognitive health complications.

49. During these decades, the NFL voluntarily participated, albeit inadequately, in the work of various entities studying the performance and effectiveness of safety gear to reduce the risk of neurological injuries from concussive and sub-concussive injuries. The NFL's participation in these activities was voluntary and a continuance of the duty to protect player safety that it had assumed in the first half of the twentieth century.

50. By the early 1990s, the consensus among experts in the scientific community forced the NFL to take a different approach to the growing problem of "mild traumatic brain injuries" ("MTBI") among existing and former NFL players. In or around 1992, the NFL knew that many football players, including by way of example, Al Toon, a Pro Bowl receiver for the New York Jets, had developed brain injuries, including chronic severe headaches, malaise, intolerance of loud noises, depression, and emotional lability as a consequence of multiple "dings," concussive, and sub-concussive injuries. The NFL was aware that Mr. Toon retired in 1992 because of these chronic problems.

51. In that period, when DeCarlo was suffering from the effects of neurological damage, the NFL's commissioner was Paul Tagliabue. When Tagliabue was selected for the

position in 1989, he had no connection to football beyond his litigation experience, but instead was a tort-liability expert from the law firm of Covington & Burling.

52. Under Tagliabue's direction, the NFL commissioned a purported study of concussions, resulting in a number of junk-science-laden papers that it pressured leading peer-review journal *Neurology* to publish.

53. In 1994, pursuant to a directive from its principal/master, NFL Charities, acting as the agent/servant of Defendant NFL, funded the Mild Traumatic Brain Injury Committee (the "MTBI Committee").

54. The MTBI Committee was a purportedly independent entity, funded by money directed to NFL Charities, a separate 501(c)(3) organization consisting of—at all times material—the same directors and officers as Defendant NFL.

55. Defendant NFL funneled money to NFL Charities with the ostensible purpose of funding good-faith concussion/head-trauma research; in fact, NFL Charities doled out annual "MTBI Grants", some into the hundreds of thousands of dollars, to NFL team doctors and tort liability experts who would create self-serving research about a problem the NFL knew was on its horizon before victims like decedent DeCarlo did.

56. Notwithstanding the purported purpose, and despite clear medical evidence that on-field sub-concussive and concussive injuries can produce MTBI with tragic results, the NFL failed to inform DeCarlo of the true risks associated with MTBI, that certain symptoms retired players were experiencing were associated to those injuries, and used it information generated by the MTBI committee to purposefully misrepresent and/or conceal medical evidence on that issue.

57. In doing so, the NFL deprived decedent DeCarlo of important palliative care, despite its constructive knowledge of his pain and suffering.

58. Through the sham MTBI Committee, funded by NFL Charities and indirectly manipulated by the NFL, the NFL inserted itself into the scientific research and discussion of the linkage between sub-concussive / concussive exposure in NFL players and latent brain disease. By doing so, the NFL undertook a responsibility to: (a) to make truthful statements; (b) not advance improper, biased, and falsified industry-generated studies; (c) to not discredit well-researched and credible studies that came to a conclusion that did not comport with the NFL's financial and political interests; and, (d) inform all former players, all current players, and the football-playing public, including young people and their families, regarding the risks of MTBI in football.

59. After voluntarily assuming a duty to investigate, study, and truthfully report the medical risks associated with MTBI in football, the NFL produced industry-funded, biased, and falsified research that claimed that concussive and sub-concussive head impacts in football do not present serious, life-altering risks.

60. By way of one example only, NFL Charities paid Dr. David Viano, PhD and Wayne State University approximately \$200,000 per year, in MTBI grant money.

61. Viano has admitted in deposition that he has made millions of dollars serving as a biomechanics expert for large companies in product-liability lawsuits. (Viano, D., dep. Mar. 14, 2003, *Heco et al v. Midstate Dodge LLC, et al*).

62. At the same time, the NFL continued to market, as it had in the past, the ferocity and brutality of the sport that, in part, gave rise to the latent and debilitating neurocognitive conditions and injuries from which decedent DeCarlo suffered for decades, and from which many other current and former NFL players now suffer.

63. For sixteen years, the NFL actively and continuously denied any link between MTBI sustained by former NFL players in NFL games and practices and the neurological symptoms and problems (such as headaches, dizziness, loss of memory, dementia, ALS, and, ultimately, CTE) from which they now suffer. The NFL made its biased and falsified position known by way of press releases, publications in scientific literature, and other communications.

64. During the same time period, the NFL actively sought to suppress other findings that showed the link between on-field sub-concussive and concussive head impacts and post-career neurocognitive damage, illness, and decline.

65. As part of the NFL's ongoing cover up and denial of any causal link between concussive and sub-concussive impacts and long-term mental health consequences, the league disputed the findings of a scientific study of its own retired players.

66. On September 30, 2009, newspaper accounts were published detailing an unreleased study assessing the health and wellbeing of retired NFL players. The study found that retired players reported being diagnosed with dementia and other memory-related diseases at a rate much higher than that of the general population. Specifically, the study found that 6.1 percent of retired NFL players age 50 or older reported being diagnosed with dementia, Alzheimer's disease, and other memory related illnesses, compared with 1.2 percent for all comparably aged men in the United States. The NFL was quick to dispute the findings and continue to deny the building scientific evidence connecting concussive and sub-concussive impact in NFL football and long-term brain injury or illness.

67. The NFL's active and purposeful concealment and misrepresentation of the severe neurological risks of repetitive MTBI exposed players to dangers they could have avoided had the NFL provided them with truthful and accurate information. Decedent Mr. DeCarlo's

eventually pain and suffering was caused and/or aggravated by the NFL's acts and/or omissions in keeping this knowledge from him. Additionally, the NFL's denial of the relationship between concussive and sub-concussive impacts and the long-term neurocognitive impairments suffered by its former players, prevented and diminished opportunities for former players like DeCarlo to seek the medical attention for the ailments that they otherwise would have, had they known the truth. The NFL's failure and breach of duty increased the risk of long-term injury and illness to its players and decreased the likelihood that former players would seek medical attention and/or treatment when symptoms first manifested.

68. The NFL caused or contributed to the injuries and increased risks to Mr. DeCarlo through its acts and omissions by, among other things: (a) ignoring the true risks of exposure to concussive and sub-concussive blows in NFL football; (b) failing to disclose the true risks of repetitive MTBI to NFL players; and (c) since 1994, deliberately spreading misinformation concerning the cause and effect relationship between MTBI in NFL football and latent neurodegenerative disorders and diseases.

ARTHUR DECARLO, SR.'S FOOTBALL CAREER AND MEDICAL HISTORY

69. Arthur DeCarlo, Sr. was born on March 23, 1931. While attending East High School, DeCarlo was in the National Honor Society.

70. He played football at the University of Georgia from 1950-1952, where he studied Business Administration. Mr. DeCarlo was twice named to the "All-SEC" team, twice received honorable mention on the All-American team, and was selected to play in every post-season All-Star Classic, the Senior Bowl, the Blue-Gray game, and the College All-Star game against the NFL champion Detroit Lions.

71. Mr. DeCarlo was drafted by the Chicago Bears in the sixth round of the 1953 draft, but began his professional football career with the Pittsburgh Steelers later that year. After being drafted into the military, he served in the U.S. Army the two following years. He returned to professional football in 1956 with the Washington Redskins. DeCarlo then played with the Baltimore Colts from 1957 to 1961.

72. During his time with the Colts, DeCarlo played in back-to-back championship games in 1958 and 1959, including the game described as “The Greatest Game Ever Played.”

73. Mr. DeCarlo suffered numerous concussive and sub-concussive blows during his years playing professional football, including documented losses of consciousness where he was subsequently returned to play in the same game.

74. According to the Boston University Chronic Traumatic Encephalopathy Center (“BU CTE Center”), a leading CTE research center located at Boston University’s School of Medicine, there is no known definitive way to diagnose CTE other than postmortem neuropathological analysis, nor is there any cure.

75. The first signs of CTE generally are problems with judgment, reasoning, problem solving, impulse control, and aggression. Other common symptoms include memory loss, confusion, impaired judgment, depression, anxiety, suicidality, Parkinsonism, and eventually, progressive dementia.

76. During the last several decades of his life, Mr. DeCarlo suffered from, among other neurocognitive issues, extreme headaches, episodic memory loss, repetition of stories, and mild confusion. These symptoms began to appear at least 20 years prior to his death.

77. Upon information and belief, and as will be proven at trial, Mr. DeCarlo experienced humiliation, fear, and suffered in shame through the milder, early symptoms of CTE for years, not understanding he had a medical issue that could have been mitigated.

78. DeCarlo only sought treatment once his neurocognitive impairment was significantly advanced and noticeable to others.

79. Specifically, by 1995 Mr. DeCarlo could not ignore the pain and headaches and sought medical attention. He went to one of his attending physicians, complaining of severe headaches. Because of the NFL's continual denial of the connection between concussive and sub-concussive blows to the head, misinformation and disinformation campaign, none of Mr. DeCarlo's attending physicians considered or looked for a connection between his headaches and his time playing professional football. Instead, a Magnetic Resonance Imaging ("MRI") was ordered to determine whether a mass or sinusitis was the cause; the MRI was negative, ruling out those two possible causes.

80. By 2003, DeCarlo's condition had deteriorated to the point where he was actively pursuing alternative means of increasing his mental capacity. At that time, after attempting to deal with his fading memory through numerous methods, Mr. DeCarlo visited several other physicians at the Veteran's Administration Hospital system. There he was prescribed Aricept, a medication used for the treatment of Alzheimer's. During one visit, on March 10, 2003, Mr. DeCarlo was unable to recall correctly the date or the season.

81. Several MR's and Computed Tomography ("CT") scans later, in July 2005, a Neuropsychiatrist and Director of the Neuropsychiatry Program at Sheppard Pratt Hospital in Baltimore, Maryland described significant atrophy and ventricular enlargement as "secondary to repeated injury [Mr. DeCarlo] received as a professional football player." In July of 2005,

during a “Mini-Mental Status Examination” Mr. DeCarlo was unable to recall the day, date, year, season, hospital, building, or floor. As the doctor noted, “[Mr. DeCarlo] recalled 0/3 objects for delayed recall.”

82. From Sheppard Pratt Hospital, Mr. DeCarlo was referred to Johns Hopkins Medicine to rule out normal pressure hydrocephalus as an alternative cause for his impairment. In October 2005, Johns Hopkins Medicine noted that it had found no evidence of any hydrocephalus and ruled it out as a possible cause for Mr. DeCarlo’s dementia.

83. On December 21, 2013, Mr. DeCarlo passed away at his son’s home due to complications from his dementia. This fact was confirmed when his brain was sent to the Boston University Center for CTE assessment. After examination, the Boston University CTE Center determined that Mr. DeCarlo had been living with CTE, Additionally, Mr. DeCarlo was diagnosed with Alzheimer’s disease.

84. As of September 30, 2014, Mr. DeCarlo is one of 87 former NFL players, of 91 tested, to have been definitively diagnosed with CTE.

CAUSES OF ACTION

COUNT I **FRAUDULENT CONCEALMENT**

85. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

86. Mr. DeCarlo, and Mr. DeCarlo’s heirs and next of kin were unaware of the connection between Mr. DeCarlo’s years playing football and the decedent’s potential for, and ultimate diagnosis with, CTE.

87. Between 1933 and 1968, the NFL voluntarily assumed and carried out a duty to supervise how the game of football was played in the United States. The NFL knowingly

concealed facts and information and/or made continuing misrepresentations of material fact with the intent to deceive and defraud, causing Mr. DeCarlo to be exposed to the harm referenced above. The fraudulent concealment includes the fact that, during DeCarlo's career, he was at increased risk for long-term neurological damage by continuing to play following exposure to concussive and/or sub-concussive blows and/or MTBI. The NFL also concealed the fact that, in DeCarlo's post-NFL life, he was at an increased risk for progressive neurocognitive disease.

88. The NFL's concerted concealment of the risks to which Mr. DeCarlo was exposed on the playing field delayed his ability to plan for the future of himself and his family and to seek appropriate treatment for his latent neurodegenerative conditions. The concealment also substantially increased DeCarlo's pain and suffering once his disease manifested, because he could not act most effectively to mitigate his symptoms.

89. For decades, the NFL and its employees, including those who participated in the NFL MTBI Committee, acted in concert to perpetrate the fraudulent concealment of the connection between repetitive MTBI and long-term neurocognitive damage, illness, and decline.

90. The NFL, along with those who participated in the concerted efforts referenced above, knowingly failed to disclose and/or made continuing misrepresentations of material fact that there was an absence of any scientific basis to believe that repetitive MTBI created any known long-term neurocognitive risks to NFL players, including Mr. DeCarlo. The failure to disclose and/or continuing misrepresentations not only exposed DeCarlo to risk, but prevented him from recognizing the decline in his neurocognitive function and seeking treatment for those CTE-related symptoms that he otherwise would have had he been made aware of the connection between repeated concussive and sub-concussive impacts and long-term neurocognitive impairment and decline.

91. The NFL knew or should have known that DeCarlo would rely on the inaccurate information provided by the NFL; and DeCarlo did in fact reasonably rely on the inaccurate information provided by the NFL during and after his NFL career.

92. As a direct and proximate result of the Defendant's fraudulent conduct, Mr. DeCarlo suffered the harm described above, including, but not limited to, years of latent cognitive conditions that created memory loss, diminished cognitive function, non-economic losses, and economic losses.

93. As a direct and proximate result of the NFL's fraudulent conduct, Plaintiff has suffered substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages.

COUNT II **FRAUD**

94. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

95. At least since the early 1950s, the NFL knew that repetitive head impacts in football games and full-contact practices created a risk of harm to NFL players that was similar or identical to the risk of harm to boxers who receive the same or similar repetitive impacts to the head during boxing practices and matches.

96. The NFL knew that the risks of brain injury could be reduced by implementing changes to the game, akin to the ones the NFL belatedly adopted in 2011, such as (1) the baseline cognitive testing of players for comparison purposes during and after contact play, (2) the active monitoring of players for signs of MTBI, (3) the employment of a neurologist on the sidelines, and (4) return-to-play rules consistent with proper medical management of MTBI.

97. The NFL, however, withheld the information it knew about the risks of head injuries in the game from then-current NFL players and former NFL players and ignored the known risks to all NFL players.

98. As a result of the NFL's misconduct as alleged herein, DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT III **CIVIL CONSPIRACY**

99. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

100. The NFL actively and deliberately conspired with its member-clubs to conceal the information alleged in Count I from DeCarlo. The NFL also conspired with MTBI Committee team-members to discount and reject the causal connection between multiple concussions suffered while playing in the NFL, a non-scientific return-to-play policy for players suffering concussions, and the chronic long-term effects of these injuries.

101. This conduct between the NFL and others was a proximate cause of the chronic injuries and damages suffered by Decarlo.

102. As a result of the NFL's misconduct as alleged herein, DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT IV **NEGLIGENCE**

103. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

104. Between 1933 and 1968, the NFL voluntarily assumed and carried out a duty to supervise how the game of football was played in the United States.

105. Between 1933 and 1968, the NFL assumed and carried out a duty to inform and advise players and teams of foreseeable harm in the form of head and neck injuries. For example, in 1943 the NFL required hard plastic helmets to reduce head wounds and internal injury and in 1956 and 1962 limited the grabbing of an opponent's facemask. These warnings were furnished and safety rules imposed by the NFL because it had assumed a duty to provide a safe environment for players and because of its superior knowledge of the risks of injury to players.

106. The NFL knew or should have known of medical or scientific literature regarding the risks of short- and long-term neurocognitive disabilities and deficits to athletes exposed to MTBI.

107. The NFL knew or should have known that repetitive sub-concussive and concussive blows to the heads of NFL players can and do result in short- and long-term brain damage.

108. The NFL knew or should have known that it was the practice in the NFL to compel or cajole players to play with injuries, including sub-concussive injuries, concussive injuries and injuries involving a loss of consciousness.

109. The NFL had superior knowledge (as compared to the NFL players themselves) that athletic sporting events causing sub-concussive and concussive injuries posed a serious risk of short-term and long-term cognitive disabilities.

110. The NFL's failure to address the continuing health risks associated with sub-concussive and/or concussive injuries that NFL players sustained before 1968 constituted a breach of its duty to these players, which has resulted in long-term neurocognitive problems and disabilities to former NFL players, including Mr. DeCarlo.

111. Mr. DeCarlo reasonably relied on the NFL's actions, statements, policies, and omissions on the subject, to his detriment.

112. The NFL acted carelessly and negligently in its position as the regulatory body for all the team members and the decedent in the following respects:

- a. Failing to warn of the risk of unreasonable harm resulting from repeated concussions;
- b. Failing to disclose the special risks of long-term complications from repeated concussions and returning to play;
- c. Failing to disclose the role that repeated concussions has in causing chronic life-long cognitive decline;
- d. Failing to promulgate rules and regulations to adequately address the dangers of repeated concussions and a return-to-play policy to minimize long-term chronic cognitive problems;
- e. Misrepresenting pertinent facts that players needed to be aware of to make determinations of the safety of returning to play;
- f. Failing to adopt rules and reasonably enforce those rules to minimize the risk of players suffering debilitating concussions;
- g. Outlawing and then regulating plastic helmets, and facebars for plastic football helmets;
- h. Continuing to deny the relationship and/or connection between repeated concussive and sub-concussive impacts for the decades that followed Mr. DeCarlo's exposure, causing him to ignore the need for necessary treatment; and
- i. Other acts of negligence or carelessness that may materialize during the pendency of this action.

113. As a result of the NFL's misconduct as alleged herein, Mr. DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT V
NEGLIGENCE

114. Plaintiffs adopt and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

115. The NFL owed players during decedent DeCarlo's era a duty, pursuant to its obligations as rule-maker and governing agent of its trade association, to enact rules and to otherwise undertake measures to ensure for player-safety.

116. The NFL failed to enact reasonable player-safety measures, including but not limited to return-to-play guidelines which would have prohibited returning unconscious players to football play.

117. Decedent DeCarlo suffered a reasonably foreseeable injury and a wrongful death proximately and/or directly caused by the NFL's breach of this duty, specifically his CTE and the attendant pain and suffering he experienced along with it.

118. As decedent DeCarlo's suffering, injury, and death, and Plaintiff DeCarlo's loss, the NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT VII
NEGLIGENT MISREPRESENTATION

119. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

120. The NFL knew that the game of football created a reasonably foreseeable risk of harm for decedent DeCarlo due to exposure to repetitive sub-concussive and concussive blows, but created rules of play between 1953 and 1961 which materially represented these risks, notably regulating plastic football helmets.

121. The NFL made misrepresented the safety of football through its rules during the period of DeCarlo's NFL player without knowledge of the misrepresentation's truth or falsity, or should have known of its falsity.

122. The NFL intended that decedent DeCarlo rely on its misrepresentation.

123. Decedent DeCarlo's injuries occurred when he was exposed to repetitive sub-concussive and concussive exposures, which were substantial factor in his CTE diagnosis, and CTE-related suffering in life.

124. Mr. DeCarlo also reasonably relied upon the NFL's statements and omissions given the superior and unique vantage point the NFL had on the issues which, if different, could have substantially mitigated his suffering and thereby lessened his damages.

125. The NFL's additional misrepresentations included:

- a. the false statement that present NFL players were not at an increased risk of short-term and long-term adverse consequences if they returned too soon to NFL games or practices after suffering head trauma and, therefore, that former players had not been exposed to such increased risk during their time in the NFL; and
- b. ongoing and baseless criticism of legitimate scientific studies that set forth the dangers and risks of head impacts which NFL players regularly sustained

126. The NFL knowingly and/or negligently made these representations with the intent that current and former players, including Mr. DeCarlo, rely on them.

127. As a result of the NFL's misconduct as alleged herein, Mr. DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT VIII
NEGLIGENT HIRING

128. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

129. The NFL acted as co-conspirator with and or in an principal/master role with its agent/servant NFL Charities, in funneling money to fund the MTBI Committee.

130. The NFL voluntarily and gratuitously inserted itself into the business of studying (and subsequently rendering expert opinions about) the relationship between repetitive head impacts in football and brain injury.

131. In doing so, the NFL assumed a duty to Mr. DeCarlo and other players to retain and employ persons within the MTBI Committee who were professionally competent to study and render opinions on the relationship between repetitive head impacts in football and brain injury and to ensure that those whom it hired had no conflict of interest and that each had the professional and personal qualifications to conduct those studies and render opinions that were scientifically rigorous, valid, defensible, and honest.

132. The NFL breached its duty to the decedent and the general public by hiring persons who:

- a. were unqualified;
- b. were not competent to engage in rigorous and defensible scientific research;
- c. were not competent to render valid and defensible opinions;

- d. created fraudulent industry-funded research; and/or
- e. attacked as not credible the valid and defensible research and opinions generated by neuro-scientists who were unconnected to and not paid by the NFL.

133. The NFL's negligence in this regard resulted in a body of falsified industry-funded research that purposefully and/or negligently contested and suppressed valid and truthful bio-medical science. The NFL's negligence allowed the MTBI Committee to use falsified industry-funded research to mislead Mr. DeCarlo, other former NFL players, and the general public regarding the risks associated with repetitive head impacts in the game of football.

134. As a result of the NFL's misconduct as alleged herein, Mr. DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT IX
NEGLIGENT RETENTION

135. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

136. The NFL acted as co-conspirator with and or in an principal/master role with its agent/servant NFL Charities, in funneling money to fund the MTBI Committee.

137. The NFL knew or should have known that the controlling members of the MTBI Committee demonstrated an ongoing lack of competence, objectivity and inadequate judgment to study and render expert opinions on the issue of the relationship between repetitive head impacts in football and brain injury.

138. The NFL voluntarily assumed a duty to Mr. DeCarlo and other players not to allow those incompetent persons it had hired within the MTBI Committee to continue to conduct

incompetent and falsified studies and render incompetent opinions on the relationship between repetitive head impacts in football and brain injury.

139. During the time period when the MTBI Committee was conducting its purported research and rendering its purported opinions, the NFL knew or should have known that the purported research and opinions of the MTBI Committee were false and indefensible.

140. The NFL breached its duty to Mr. DeCarlo and other players by allowing these incompetent and unqualified persons, under the auspices and with the imprimatur of the NFL:

- a. to continue to create incompetent and indefensible research,
- b. to continue to render invalid and indefensible opinions, and
- c. to continue to attack the credible and defensible research and opinions of neuro-scientists not connected to or paid by the NFL.

141. The NFL's negligence allowed the incompetent members of the MTBI Committee to continue to advance their false and incompetent research and opinions in an attempt to suppress valid bio-medical science. The NFL's negligence allowed the MTBI Committee members to mislead Mr. DeCarlo, other former NFL players, and the general public regarding the permanent brain injury risks associated with repetitive head impacts in the game of football.

142. As a result of the NFL's misconduct as alleged herein, Mr. DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

COUNT VII
WRONGFUL DEATH/SURVIVAL ACTION DAMAGES

143. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

144. Plaintiff, as Personal Representative to the Estate of Arthur DeCarlo, Sr., brings these claims pursuant to the Pennsylvania Survival Act, 42 Pa. C.S.A. § 8302, and the Pennsylvania Wrongful Death Act, and the Wrongful Death Act, 42 Pa. C.S.A. § 8301.

145. Plaintiff, on behalf of the Mr. DeCarlo's Estate and the next of kin and heirs alleged above, hereby seeks all damages allowable under the law for Wrongful Death and the Survival Action, including but not limited to past medical expenses and medically-related costs associated with the harm suffered and injuries and disability referenced above, a loss of earnings and earning capacity associated with the harm suffered and the injuries and disability referenced above, and intangible harm and injuries described herein including, but not limited to, years of headaches, dizziness, loss of memory, depression, impulsivity, cognitive impairment, loss of bodily function, embarrassment, loss of the pleasures of life, and loss of consortium, services, and companionship as allowed by law.

146. As a result of the NFL's misconduct as alleged herein, Mr. DeCarlo suffered brain injuries that were progressive and latent and did not take protective measures or seek the diagnosis and treatment he would have otherwise sought had he been informed of the truth. The NFL is liable to Plaintiff for, and Plaintiff seeks, the full measure of damages allowed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. An award of compensatory damages, the amount of which will be determined at trial;
- B. Punitive and exemplary damages, as applicable;
- C. All applicable statutory damages;
- D. An award of attorneys' fees and costs;

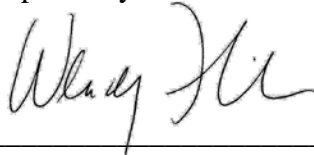
- E. An award of prejudgment interest and costs of suit; and
- F. An award of such other and further relief as the Court deems just and proper.

JURY DEMANDED

Plaintiff hereby demands a trial by jury on all matters so triable. Signed this 11th day of November, 2015.

Dated: November 11, 2015

Respectfully Submitted:



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